

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ALBUQUERQUE ASPHALT, INC.,
a New Mexico corporation,

Plaintiff,

v.

No. 1:23-cv-01099-MV-KK

ARROW INDIAN CONTRACTORS, INC.,
an Arizona corporation,
Defendant

MOTION TO ENFORCE SETTLEMENT

COMES NOW Plaintiff Albuquerque Asphalt, Inc., by and through counsel, Calvert Menicucci, P.C. (Sean R. Calvert), and moves the Court to enforce settlement reached in this matter. In support of this Motion Albuquerque Asphalt, Inc. states as follows:

1. Arrow Indian Contractors, Inc. (“Arrow”) entered into a contract with the Navajo Nation for the construction of a project known as Contract No. 14713-N57 Tohajilee Road Improvements Phase II. *Complaint (Doc. 1)*, ¶ 6; *Answer (Doc. 21)*, ¶ 6.

2. Arrow subcontracted the paving portion of the work to Albuquerque Asphalt, Inc. *Complaint (Doc. 1)*, ¶ 7; *Answer (Doc. 21)*, ¶ 7.

3. Albuquerque Asphalt, Inc. was not paid in full for the work performed. *Complaint (Doc. 1)*, ¶ 10; *Answer (Doc. 21)*, ¶ 10.

4. Arrow entered into a proposed payment plan to pay off the balance of the amount due to Albuquerque Asphalt, Inc. over time through July, 2023. *Complaint (Doc. 1)*, ¶ 11; *Answer (Doc. 21)*, ¶ 11.

5. The balance remaining due under the payment plan was and remains at this time \$393,908.65.

6. Mediation was set in this matter for June 3, 2023 before Eric Sommer. *Aff. Sean Calvert*; ¶ 3.

7. On May 30, 2024 Arrow, through counsel, proposed a settlement for the full amount remaining, \$393,908.65, secured by a stipulated judgment with an agreement not to execute on the judgment as long as Arrow continued to make partial payments of \$10,000 per month against the settlement. *Aff. Sean Calvert*, ¶ 4.

8. On May 31, 2024 Albuquerque Asphalt, Inc. countered accepting the terms as proposed, but requiring security in the form of a bond or similar security. *Aff. Sean Calvert*, ¶ 5.

9. On May 31, 2024 Arrow, through counsel, accepted and the mediation in this matter was cancelled as the parties had reached a settlement. *Aff. Sean Calvert*, ¶ 6.

10. Subsequent to the settlement Arrow has not provided the proposed security and has not made any payment against the agreement. *Aff. Sean Calvert*, ¶ 7.

WHEREFORE, Albuquerque Asphalt, Inc. respectfully requests that the Court enforce the settlement agreement reached between the parties as follows:

1. Enter judgment against Arrow in the amount of \$393,908.65, plus interest.
2. Require Arrow to provide security in the form of a surety bond or similar third-party security for the judgment within ten (10) days of the date of the order.
3. Require Arrow to pay \$20,000 within ten (10) days of the date of the order as the agreed monthly payments for June and July, 2024 pursuant to the settlement.
4. In the event that Arrow does not make the required payments and does not provide the required security allow Albuquerque Asphalt, Inc. to proceed with enforcement of its judgment.

Respectfully Submitted

Calvert Menicucci, P.C.

Sean R. Calvert

Sean R. Calvert
Counsel for Plaintiff
8804 Washington St., NE, Suite E
Albuquerque, New Mexico 87113
(505) 247-9100
scalvert@hardhatlaw.net

I hereby certify that the foregoing was filed electronically through the Court's electronic filing system which caused counsel of record to be served on this 17th day of July 2024:

Travis G. Jackson
Dyea Reynolds
Attorneys for Arrow Indian Contractors, Inc.
Jackson Loman Stanford Downey &
Stevens-Block
201 Third Street NW, Suite 1500
Albuquerque, New Mexico 87102
(505) 767-0577
travis@jacksonlomanlaw.com
dyea@jacksonlomanlaw.com

Sean R. Calvert
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